TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule
LSA Document #06-182

DIGEST

Adds 329 IAC 9-1-18.5, 329 IAC 9-1-27.5, 329 IAC 9-1-27.6, 329 IAC 9-1-27.8, 329 IAC 9-1-40.5, 329 IAC 9-1-41.8, 329 IAC 9-1-45.5, and 329 IAC 9-2-1.2 and amends 329 IAC 9-1-37 concerning additional measures to protect ground water. Repeals 329 IAC 9-1-27.4 and 329 IAC 9-2-1.1. Effective 30 days after filing with the Publisher.

HISTORY

Findings and Determination of the Commissioner pursuant to IC 13-14-9-7 and Second Notice of Comment Period: July 1, 2006, Indiana Register (29 IR 3439).

Notice of First Hearing: July 1, 2006, Indiana Register (29 IR 3443).

Date of First Hearing: September 19, 2006.

PUBLIC COMMENTS UNDER IC 13-14-9-4.5

IC 13-14-9-4.5 states that a board may not adopt a rule under IC 13-14-9 that is substantively different from the draft rule published under IC 13-14-9-4 until the board has conducted a third comment period that is at least 21 days long. Because this proposed rule is not substantially different from the draft rule published on July 1, 2006, at 29 IR 3439, the Indiana Department of Environmental Management (IDEM) is not requesting additional comment on this proposed rule.

SUMMARY/RESPONSE TO COMMENTS FROM THE SECOND COMMENT PERIOD

IDEM requested public comment from July 1, 2006, through August 1, 2006, on IDEM's draft rule language. No comments were received during the second comment period.

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On September 19, 2006, the Solid Waste Management Board conducted the first public hearing/board meeting concerning the development of amendments to 329 IAC 9 concerning additional measures to protect ground water from leaking underground storage tanks. IDEM received comments from the following parties:

Scott Imus, Executive Director, Indiana Petroleum Marketers and Convenience Store Association (IPCA)

Maggie McShane, Executive Director, Indiana Petroleum Counsel (IPC)

The following are the comments received at the hearing and IDEM's responses thereto:

Comment: My name is Maggie McShane. I'm Executive Director of the Indiana Petroleum Council, and the Council is a trade association that is based here locally, and our members are comprised of the major oil companies that have assets and conduct business in the State of Indiana.

I'm here today representing those members, and in addition, I'm wearing a second hat today. I'm also here to speak on behalf of the Indiana Petroleum Marketers and Convenience Store Association, and their Executive Director, Mr. Scot Imus, unfortunately had another obligation and another hearing this afternoon, exactly at this very time, and asked that I speak on behalf of their organization, too. His organization represents the oil marketers, and sometimes people that we refer to as jobbers in our business.

These are Mr. Imus' comments: Mr. Chairman and Board members, this letter provides the Indiana Petroleum Marketers and Convenience Store Association's comments to the Solid Waste Management Board on the preliminary adoption of LSA No. 6-182, amendments to rules at 329 IAC 9 concerning additional measures to protect ground water. The IPCA represents Indiana's petroleum marketing and convenience store industry and has more than 300 corporate members who work in the petroleum supply and distribution industry. These small to medium-sized businesses own and operate thousands of service stations and convenience stores and their related underground storage tanks throughout the State of Indiana.

Number one, Board consideration of this rule is premature in that the U.S. Environmental Protection Agency has yet to issue final guidance on this matter. The proposed rule arises out of provisions in the Energy Policy Act of 2005, PL 109-58, specifically Section 1530 of the Act, which requires each new underground storage tank or piping installed or reinstalled after February 8th, 2007 to be secondarily contained if it's within one thousand feet of any existing community water system or any existing potable drinking water well, or -- and this is the important point -- or evidence of financial responsibility for the person that manufactures a UST or piping for a UST, or installs a UST.

The rule you're considering today is based solely upon the inference by statutory language adopted by Congress, as the U.S. EPA has yet to issue any final guidance that would serve to better direct state regulatory agencies in the regulated community. For instance, what is meant by an existing community water system? Is that

subject to a broad interpretation, such as any closed residential water line, or will it be defined more narrowly? Until U.S. EPA gives such final guidance, the State of Indiana will not be certain if this rule complies with the full intent of Section 1530. The argument has been advanced that this rule needs to go forward now or the state could lose potential federal funding. We do not believe this will be the case. In fact, EPA officials have stated privately that there will be no withholding of funds as long as the state regulatory agencies are awaiting EPA to fulfill their responsibilities. As such, the IPCA is aware that only Indiana and a very small number of other states are proceeding with similar rulemaking at this time. (IPCA) (IPC)

Response: It is not premature but timely to adopt the federal law into the Indiana rule now. It will be effective on or around the time the federal law requirements are effective. This rule is based on the latest federal guidance and any changes to the guidance will be amended into the rule.

Comment: Point two: Contrary to the supporting documents, there are several financial costs -- there are severe financial costs associated with this rule. Members of IPCA installing or reinstalling UST's will see their costs increase dramatically if secondary containment is required.

Consider the following price quotes that were taken this week from a tank distributor: A 10,000-gallon tank, single walled, $10,500; a 10,000-gallon tank, double walled, $22,940. For a 20,000-gallon tank, single walled, $20,960; double walled, $44,980. A typical small site with one 20,000-gallon tank and one 10,000-gallon tank would see tank costs increase from 31,460 to 67,920, or by 116 percent. (IPCA) (IPC)

Response: Because the federal law requires secondary containment for UST systems within 1000 feet of a community water supply system, there is no additional cost incurred as a result of this state rule.

Comment: Point no. 3: Other options were not considered which could provide greater environmental protection in a more cost-efficient manner. In Section 1530 of the Act, Congress did provide regulatory agencies in a regulatory community with several options that could be taken to achieve compliance. As an alternative -- As an alternative, regulators have the flexibility to require tank manufacturers, piping manufacturers or tank installers to maintain financial responsibility. That option is not included in this rulemaking. (IPCA) (IPC)

Response: All options were considered. The Indiana Solid Waste Management Board does not have the authority to require financial assurance of manufacturers or installers. Even if the Board had such authority it is not clear how the rule could extend to apply to manufacturers and installers that are located out-of-state. In addition, even if all these obstacles were removed, it is IDEM's position that it is better to prevent a release with secondary containment than require financial assurance that would not be used until after a release occurs.

Comment: If I may now switch over to my comments from the Petroleum Council, we'd like to reinforce what Mr. Imus said and suggest to the Board that undertaking this rulemaking at this time is premature, and for the state to adopt rules prior to clear federal guidelines is a risk-laden approach that could very well jeopardize our future funding and ability to comply with the very grant requirements that are set up by the Federal Government.

This Energy Policy Act of 2005 is -- there's more than 500 pages contained in that Act. Only about 15 of those apply to this particular rulemaking that we're talking about now, but there are many provisions in that than the small 15 pages that are not included in this rulemaking: Financial assurance as an option, financial responsibility as an option, secondary containment, which is a good thing when it's necessary, but for small business people, very costly. (IPC)

Response: All options were considered. The Indiana Solid Waste Management Board does not have the authority to require financial assurance of manufacturers or installers. Other provisions of the federal law will need to be implemented by other agencies or as an IDEM policy.

Comment: In addition, there's an inspection program that's not contained in this rule, there is prohibitions on deliveries of noncompliant tanks that has been omitted, and numerous other provisions that are not being addressed in this rulemaking. We suggest the state is moving too quickly --I understand -- and ask you to wait for the federal guidelines and not risk us losing federal grant money that would be available in the future. (IPC)

Response: It is not a policy of the department to write state rules that impose requirements such as inspection frequencies on the department. The changes to the inspection program and fuel delivery prohibition will be handled under departmental policy or by other state agencies.

Comment: That is federal law, so the Act was signed almost exactly a year ago. EPA, in private conversations, has recognized that the time lines in that Act were completely unreasonable. Fewer than -- I would say, approximately about half a dozen states are in the process of rulemaking, whatever -- as we all know, each state has a different process. One state, the State of Massachusetts, has adopted the option of financial responsibility. That option is important for folks to consider, because certainly secondary containment or double lining, double walling of tanks is a good measure to prevent leaks, but what folks in our industry have found is that when there has been a release in a tank that was upgraded, you know, a compliant underground storage tank, when a release occurred nevertheless, it -- more often than not, that release occurred because the tank wasn't installed properly. Either it was poorly installed by a contractor that did not do a good job, or there were errors in the manufacturing process that resulted in the integrity being challenged. That's why, from a purely environmental protection standpoint, making those folks, you know, provide financial responsibility is a good option for the state to have as opposed to uniformly. (IPC)

Response: Indiana is taking a proactive approach in considering that secondary containment will prevent a

leak and contamination from occurring. Financial assurance does not prevent a leak and contamination from occurring but only provides clean-up funds after a leak and contamination has occurred. Owners and operators can hold tank and piping manufacturers accountable through a contract. From an environmental protection standpoint, the secondary containment option is clearly better.

Comment: If I'm a convenience store and I remove a tank or install a tank on February 9, 2007, do I -- this can be just a short answer, yes or no -- am I obligated to comply with the current federal standards that have been passed by Congress? Absolutely, that's federal law, and the federal law gives you two options. (IPC)

Response: It is important for consistency and clarity that the federal law be reflected in state rule by the effective date of the federal law.

329 IAC 9-1-18.5; 329 IAC 9-1-27.4; 329 IAC 9-1-27.5; 329 IAC 9-1-27.6; 329 IAC 9-1-27.8; 329 IAC 9-1-37; 329 IAC 9-1-40.5; 329 IAC 9-1-41.8; 329 IAC 9-1-45.5; 329 IAC 9-2-1.1; 329 IAC 9-2-1.2

SECTION 1. 329 IAC 9-1-18.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-18.5 "Existing" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 18.5. "Existing" means that a:
(1) tank;
(2) piping;
(3) motor fuel dispensing system;
(4) facility;
(5) community public water supply system (CPWSS); or
(6) potable drinking water well;
is in place before beginning the installation or replacement of a tank, piping, or motor fuel dispensing system. The term includes a potable drinking water well that the UST owner has or will install at a new underground storage tank facility regardless of whether the well is installed before or after the tanks, piping, and motor fuel dispenser systems.

(Solid Waste Management Board; 329 IAC 9-1-18.5)

SECTION 2. 329 IAC 9-1-27.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.5 "Interstitial monitoring" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.5. "Interstitial monitoring" means a release detection method that continuously monitors the interstitial space of an underground storage tank and piping. The term includes only those release detection systems that are capable of detecting a breach in the primary containment of the underground storage tank and piping component being monitored before the regulated substance or petroleum stored is released to the environment.

(Solid Waste Management Board; 329 IAC 9-1-27.5)

SECTION 3. 329 IAC 9-1-27.6 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.6 "Interstitial space" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.6. "Interstitial space" means the space between the primary and secondary containment systems.

(Solid Waste Management Board; 329 IAC 9-1-27.6)

SECTION 4. 329 IAC 9-1-27.8 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-27.8 "Karst terrains" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 27.8. "Karst terrains" means an area where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present to karst terrains include any of the following:

(1) Sinkholes.
(2) Sinking streams.
(3) Caves.
(4) Large springs.
(5) Blind valleys.
(6) Grikes.
(7) Karren.
(8) Solution widened joints or bedding planes.
(9) Loss of drilling fluid during core drilling.
(10) Anasotmosis and conduits of less than one (1) meter, but more than two and five-tenths (2.5) millimeters.
(11) Karst aquifer.

(Solid Waste Management Board; 329 IAC 9-1-27.8)

SECTION 5. 329 IAC 9-1-37 IS AMENDED TO READ AS FOLLOWS:

329 IAC 9-1-37 "Pipe" or "piping" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 37. (a) "Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of nonearthen materials **that routinely contains and conveys regulated substances from the tank or tanks to the dispenser or other end-use equipment.**

(b) The term does not include vent, vapor recovery, or fill lines that do not routinely contain regulated substances.

(Solid Waste Management Board; 329 IAC 9-1-37; filed Dec 1, 1992, 5:00 p.m.: 16 IR 1067; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535)

SECTION 6. 329 IAC 9-1-40.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-40.5 "Replaced" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 40.5. "Replaced" means the permanent removal from service and the new installation of any of the following:

(1) An underground storage tank.
(2) More than fifty percent (50%) of the length of any underground piping between the tank and the dispenser or other end-use equipment at any one (1) time.

(3) A motor fuel dispenser system and the equipment necessary to connect the dispenser to the underground storage tank system. For purposes of this definition, this equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser and connect the dispenser to the piping.

(Solid Waste Management Board; 329 IAC 9-1-40.5)

SECTION 7. 329 IAC 9-1-41.8 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-41.8 "Secondary containment" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 41.8. "Secondary containment" means a release detection system that meets the requirements of 329 IAC 9-7-4(7), but does not include an under-dispenser spill containment system.

(Solid Waste Management Board; 329 IAC 9-1-41.8)

SECTION 8. 329 IAC 9-1-45.5 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-1-45.5 "Under-dispenser spill containment" defined

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-18-17-6; IC 13-23-3

Sec. 45.5. (a) "Under-dispenser spill containment" means a device that is capable of preventing an unauthorized release from under the dispenser from entering the soil or ground water or both.

(b) Such containment must:
(1) not allow liquid to penetrate on any side, bottom, and penetrations;
(2) be compatible with the substance conveyed by the piping; and
(3) allow for visual inspection and access to the components in the under-dispenser spill containment system.

(Solid Waste Management Board; 329 IAC 9-1-45.5)

SECTION 9. 329 IAC 9-2-1.2 IS ADDED TO READ AS FOLLOWS:

329 IAC 9-2-1.2 New or replaced UST systems within 1,000 feet of a community public water supply system or potable drinking water well

Authority: IC 13-14-8-1; IC 13-14-8-2; IC 13-23-1-1; IC 13-23-1-2
Affected: IC 13-11-2-241; IC 13-18-17-6; IC 13-23-3

Sec. 1.2. (a) This section applies to the following:
(1) A new or replaced UST system that is installed within one thousand (1,000) feet of any existing community public water supply system (CPWSS) as defined in rules of the water pollution control board at 327 IAC 8-4.1-1(5) or any existing potable drinking water well.
(2) Piping using a suction system for product delivery under 329 IAC 9-7-2(2)(B).
(3) Tanks used for emergency power generation that are deferred from release detection under 329 IAC 9-1-1(d).

(b) A new or replaced UST system that is installed within one thousand (1,000) feet of an existing CPWSS or any existing potable drinking water well must meet the following requirements:
(1) The underground storage tank must be a secondarily contained tank and meet the following conditions:

(A) An interstitial monitoring device that must be located in the interstitial space between the walls and is monitored continually.

(B) Was or will be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability and running conditions.

(C) Is able to contain regulated substances released from the tank system until the regulated substances are detected and removed.

(D) Is able to prevent the release or regulated substances to the environment at any time during the operational life of the underground storage tank system.

(E) Meets the appropriate following standards:

(i) Underwriters Laboratory Standard 58, "Steel Underground Tanks for Flammable and Combustible Liquids", 1986, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(ii) Underwriters Laboratory Standard 1316, "Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products, Alcohols, and Alcohol-Gasoline Mixtures", 1994, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(iii) Steel Tank Institute Standard F841-01, "Standard for Dual Wall Underground Steel Storage Tanks", 2001, 570 Oakwood Road, Lake Zurich, IL 60047.

(2) Piping installation must be secondarily contained piping and meet the following conditions:

(A) An interstitial monitoring device that must be located in the interstitial space between the walls and meet the following as appropriate:

(i) The interstitial space is under a vacuum or pressure.

(ii) The interstitial space is liquid-filled.

(iii) The interstitial space is monitored continually.

(B) Was or will be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability and running conditions.

(C) Monitoring devices between the inner and outer barriers of the tanks and piping that can detect a leak or release of product from the primary barrier.

(D) Meets the standard Underwriters Laboratory Standard 971, "Nonmetallic Underground Piping for Flammable Liquids", 1986, Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062.

(E) Is either of the following:

(i) One hundred percent (100%) secondarily contained.

(ii) Secondarily contained piping with single-walled piping ends that terminate in tank and dispenser sumps.

(c) In the case of a new underground storage tank system consisting of one (1) or more underground storage tanks and connected by piping, subsection (b) applies to all underground storage tanks and connected pipes comprising the underground storage tank system.

(d) In the case of a replaced UST system or replaced existing piping connected to the underground storage tank, subsection (b) applies only to the specific underground storage tank or piping being replaced and not to other underground storage tanks and connected pipes comprising the underground storage tank system.

(e) Each installation of a new motor fuel dispenser system must include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing CPWSS or any existing potable drinking water well.

(f) Any owner or operator of a new or replaced tank, piping, or motor fuel dispenser system not meeting the requirements of this section after February 8, 2007, must demonstrate that the tank, piping, or motor fuel dispenser system are not within one thousand (1,000) feet of a CPWSS or public drinking water well.

(g) For purposes of this section, "potable drinking water well" means any dug, driven, drilled, or bored hole that extends into the earth until it meets a water-bearing formation, such as an aquifer, consisting solely of ground water or ground water under the direct influence of surface water that provides water deemed suitable for people to drink in its ambient state or after treatment as approved by the state. Such

wells may be either privately or publicly owned and may provide water to a single-family residence, a group of residences, or a community.

(h) For purposes of this section, underground storage tank as defined under IC 13-11-2-241 does not include tank combinations or more than a single underground pipe connection to a tank.

(Solid Waste Management Board; 329 IAC 9-2-1.2)

SECTION 10. THE FOLLOWING ARE REPEALED: 329 IAC 9-1-27.4; 329 IAC 9-2-1.1.

Notice of Public Hearing

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